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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

PERU

1. The Human Rights Committee began the consideration of the second periodic report of Peru (CCPR/C/51/Add.4) at its 1133rd to 1136th meetings (forty-fourth session), held on 31 March and 1-2 April 1992 (CCPR/C/SR.1133-1136). The Committee decided, at the request of the Government of Peru, not to conclude the consideration of that report until its forty-fifth session, and to take into account the additional information offered by the State party and that was to be supplied in response to the unanswered queries and concerns of Committee members.

2. Subsequently, after it had become aware of the events that had occurred in Peru on 5 April 1992 and which affected human rights, the Committee decided, at its 1148th meeting, held on 10 April 1992, to request that a supplementary report dealing with those events should also be submitted to it for consideration (together with the additional information) at its forty-fifth session. Accordingly, having taken into account the consideration of Peru's second periodic report (CCPR/C/51/Add.4) during its 1133rd to 1136th meetings, and having noted the additional information provided by the Government of Peru (CCPR/C/51/Add.5) and having considered the supplementary report on the effects of the 5 April incidents on the implementation of articles 4, 6, 7, 9, 19, and 25 of the Covenant (CCPR/C/51/Add.6) at its 1158th to 1160th meetings, held on 20 and 21 July 1992 (CCPR/C/SR.1158-1160), the Committee adopts* the following comments:

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* At the 1175th meeting, held on 30 July 1992.

A. Introduction

3. The Committee expresses its appreciation for the Government of Peru's cooperation in continuing the dialogue during the consideration of the State party's second periodic report, and especially for providing the additional information on the report as offered by the delegation and complying with the Committee's requests for a supplementary report relating to the situation in Peru after 5 April 1992. While the representatives of the State party have made a commendable effort to answer the numerous queries raised by members, the Committee regrets that its concerns have not been adequately addressed and that most of the questions were not answered satisfactorily, both in the oral presentations and in the addendum to the report. It notes with disappointment that the delegation's offer, made at the Committee's forty-fourth session, for some of the answers to be given in writing had not been acted upon. It also regrets that the State party did not provide information on problems relating to the Covenant's application as a consequence of the events of 5 April 1992, as was requested by the Committee. As a result, the Committee has found it difficult to form a comprehensive view of the human rights situation in Peru during the interval under review and, in particular, the period after 5 April 1992.

B. Positive aspects

4. The Committee welcomes the enactment, both prior to and after 5 April 1992, of legislation concerning procedures for registering complaints about extrajudicial detention and torture, and allowing prosecutors to visit and monitor detention centres. The Committee also welcomes the legislative expression of culpability for all persons, including State officers, who engage in terrorism, arbitrary and excessive use of force, or cause disappearances. The Committee also regards as an important feature the creation of a new register on detainees and the envisaged change in the composition of the National Council for Human Rights, in order that members of different Government agencies whose activities affect the realm of human rights be represented therein. The Committee notes also the recent strong statements addressed to the army and police by the President of Peru concerning the importance of human rights.

C. Factors and difficulties impeding the application of the Covenant

5. The Committee finds little information in the report itself, relating to the period prior to 5 April 1992 and notes the Peruvian Government's view that much of the system existing before that date suffered from serious and profound flaws and needed reconstruction. Developments after 5 April 1992, when the Executive Branch seized all powers of the Peruvian State and constituted the Government of Emergency and National Reconstruction, have also not been encouraging. The Committee considers that the internal disorder and lawlessness in Peru, both before and after 5 April 1992, have obstructed the Covenant's effectiveness and, in some cases, rendered it inapplicable.

6. In this connection, the Committee observes that during all the period under examination the assumption of power by military forces in the areas declared to be under a state of emergency has rendered the implementation of certain rights and

freedoms guaranteed under the Covenant ineffective. The acceptance by the Government of civilian vigilante groups that have full army support, notably the peasants' patrols (rondas campesinas) has worsened the situation, and it is clear that the Government is not in a position to rectify various abuses, including excessive and indiscriminate retaliatory responses to terrorist acts.

7. It remains to be seen if the changes brought about by the Government of Emergency and National Reconstruction will assist in the restoration of internal law and order in Peru. At the present time there is no evidence that this is the case. The concentration of all power in the hands of the Executive, the unilateral changes by the Government of Emergency and National Reconstruction in the Judiciary, and the serious disruptions caused to the legal system have, in the Committee's opinion, impeded the application of the Covenant in Peru.

D. Principal subjects of concern

8. The Committee expresses its deep concern about the terrorism which appears to form part of the daily life in Peru. The Committee condemns the atrocities perpetrated by insurgent groups, and is particularly disturbed by the scale of terrorist violence, which shows no consideration for the most basic human rights. Nevertheless, the Committee also censures excessive force and violence used by the military, the para-military, the police, and armed civilian groups. It is troubled by the great number of complaints of extrajudicial executions and disappearances attributed to the security forces. In this respect, the Committee is deeply concerned with the absence of civilian control over the military and para-military groups, especially in the zones under their control, which in some cases amounts to impunity. In particular, the Committee regrets that they can be tried for acts of violence only under military law. The Committee considers that combating terrorism with arbitrary and excessive State violence cannot be justified under any circumstances.

9. The Committee also expresses concern about the circumstances relating to the events of 5 April 1992. The terms of Decree-Law 25418, which transformed the Executive into a Government of Emergency and National Reconstruction and dissolved other constitutional powers, has effectively suspended important parts of the Constitution and rendered the State of law uncertain; it has left the legal system and the Judiciary in disarray; it has also resulted in the de facto suspension of habeas corpus and amparo, and in the retroactive application of new legislation, especially that drawn up for specific cases.

10. The Committee has serious concerns about the application of the state of emergency in Peru. No formal notice of derogation relating to this period has been received by the Secretary-General. Procedural requirements have not been complied with. Although the Peruvian delegation told the Committee that no non-derogable right under article 4 had been derogated from, the Committee was not informed which articles of either the Covenant or the Constitution were regarded as suspended.

11. The temporary detention on 5 April 1992 of opposition leaders, mainly politicians, labour leaders and journalists, is also a cause for concern and the Committee does not find the reasons for such detentions convincing. Nor can the

unavailability of certain rights to those and other persons, resulting from the events of 5 April 1992, be legally justified.

12. The Committee also observes with concern that large numbers of persons are held for prolonged periods before trial in police cells, including women with their children. This cannot be considered compatible with the rights guaranteed under article 9 of the Covenant.

13. A further matter of concern related to follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely communications Nos. 202 (1986) and 203 (1986). The Committee regrets that no response has been received, despite the request by its Rapporteur on follow-up and repeated queries raised during the dialogue.

E. Suggestions and recommendations

14. The Committee notes the intention of the Government of Peru to restore democracy and the rule of law. However, it considers that especially during the current period, in which the totality of the State's powers lie in the Executive, the Government must pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that emergency circumstances warrant derogation from such rights, they should be strictly confined to the limitations specified under article 4, and other States parties and the Committee should be duly notified of the facts and details of such derogations. The Committee hopes that the re-establishment of the democratic system will take place as soon as possible. As elections for a Constituent Assembly have been scheduled for 22 November 1992, the Committee looks forward to seeing full implementation of the rights and freedoms under the Covenant in the near future.